HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.19310 of 2006

Between:

Jalagadugula Rajeswari and others. …. Petitioners.

AND

Municipal Council of Vizianagaram,
rep. by the Municipal Commissioner,
Vizianagaram and others. … Respondents.

::O R D E R ::

Counsel for the petitioners : Sri K.Balagopal

Counsel for respondent No.1 : Sri S.Nageswara Reddy

Counsel for respondent Nos.2 and 3 : Government Pleader for Revenue

20th September, 2006

Per G.S.Singhvi, C.J.

In this petition, the petitioners have prayed as under:

" It is, therefore, prayed that this Hon'ble Court may be pleased to issue an order, direction or writ, more particularly one in the nature of writ of mandamus declaring that the action of the first respondent in threatening to set fire to the huts of the petitioners located in Kantubukta Veedhi, opposite II Town Police Station, Vizianagaram without notice or opportunity, and during the pendency before the second respondent of the proposal of the third respondent for urban housing scheme for

the petitioners in Sy.No.209, Vizianagaram Bit-II, is arbitrary and unlawful and further direct the first respondent not to evict the petitioners until an order is passed in the said proposal, and pass such other order or orders as this Hon'ble Court deems fit and proper in the circumstances of the case.

It is further prayed that pending disposal of the writ petition, this Hon'ble Court may be pleased to stay the demolition of the petitioners' huts in Kantubuktha Veedhi, opposite II Town Police Station, Vizianagaram, in the interests of justice, and pass such other orders as this Hon'ble Court deems fit and proper in the circumstances of the case."

The petitioners claim to be the members of Scheduled Castes. They are doing the job of cleaning, sweeping etcetera in various private and public establishments in Vizianagaram. Some of them are also working as casual labourers or are engaged in the work of hawking and rickshaw-pulling. Their forefathers are said to have put up huts on government land opposite II Town Police Station, Vizianagaram. The petitioners have sought intervention of the Court for protecting their huts by alleging that as was actually done in February, 2004, the respondents have threatened to burn down their huts. In paragraph 6 of the affidavit filed by petitioner No.25 – Potnuru Adilakshmi, it has been averred that 28 of the 44 petitioners were given house site pattas in Survey No.209, but when they wanted to move to the allotted land, the pattas were taken back by Mandal Revenue Officer, Vizianagaram and were kept in the custody of Housing Department on the pretext that if allowed to settle at the new site, they would create another slum. In paragraph 7, it has been averred that District Manager (Housing), Vizianagaram had issued Proceedings Rc.No.289/04 B, dated 26-2-2004 for grant of house site pattas to the remaining petitioners, but pattas have not been issued so far. In paragraph 9, it has been averred that Commissioner of

Municipal Council, Vizianagaram came to the site with other officers and employees and threatened the petitioners that if they do not vacate the land, their huts will be burnt.

We have heard learned counsel for the parties and perused the record. Sri K.Balagopal submitted that the threat held out by the Commissioner of the Municipal Council should be treated sufficient for exercise of power by the High Court under Article 226 of the Constitution for protecting the huts of the petitioners. Learned counsel argued that even if the petitioners are treated unauthorised occupants of the public premises, the respondents cannot evict them without following the procedure prescribed under Section 228 of the Andhra Pradesh Municipalities Act, 1965 and without giving them notice and reasonable opportunity to remove the existing structures.

Learned Government Pleader for Revenue and Sri S.Nageswara Reddy, counsel for respondent No.1 argued that the apprehension expressed by the petitioners about their threatened dispossession is not well-founded. They submitted that the respondents have not initiated any action for eviction of the petitioners and, therefore, they are not entitled to seek intervention of the Court. Learned counsel for respondent No.1 further argued that the petitioners do not have any semblance of right to occupy the land belonging to the Municipal Council and, therefore, they are not entitled to the relief in terms of the prayer made.

In our opinion, the writ petition is liable to be dismissed because the petitioners have not produced any tangible evidence to substantiate the allegations contained in paragraph 5 of the affidavit that the men engaged by the Commissioner of the Municipal Council had burnt down their huts on 13-2-2004 and that the officer concerned has again held out threat for their forcible eviction or burning down of

the huts. The contents of the newspaper cutting produced by the petitioners have also not been substantiated by any contemporaneous evidence. Therefore, it is not possible to record a finding that the then Commissioner of the Municipal Council had engineered the fire in which the huts of the petitioners were gutted.

The petitioners' assertion regarding the threat held out by the present Commissioner lacks credibility and cannot be acted upon because they are not shown to have lodged or even made an attempt to lodge First Information Report (FIR) or complaint about the alleged threat held out by the officer concerned to forcibly remove their huts. They are not shown to have even represented to the District Collector and higher authorities against the alleged threat held out by the Commissioner of the Municipal Council. Therefore, the bald statement contained in the affidavit of petitioner No.25 cannot be made basis for the purpose of exercising power vested in this Court under Article 226 of the Constitution of India.

For the reasons afore-stated, the writ petition is dismissed. However, it is made clear that this order will not preclude the petitioners from making representation to the higher authorities to issue house site pattas in their favour. They shall also be free to initiate civil as well as criminal actions in the matter of alleged threat given by the Commissioner of the Municipal Council to destroy their huts.

G.S. SINGHVI, C.J.

20th September, 2006.

C.V. NAGARJUNA REDDY, J.

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